

LINDA PEDRAZA,

No. C 05-4977 CW

Plaintiff,

ORDER FOR BRIEFING  
ON DISTRICT'S  
MOTION FOR SUMMARY  
JUDGMENT OF ITS  
ATTORNEYS' FEES  
AND COSTS,  
DISMISSING  
DISTRICT'S  
REMAINING COUNTER-  
CLAIMS AND DENYING  
MS. PEDRAZA'S  
MOTIONS (Docket  
Nos. 253 and 254)

v.

ALAMEDA UNIFIED SCHOOL DISTRICT,  
et al.,

## Defendants.

ALAMEDA UNIFIED SCHOOL DISTRICT,  
et al.,

### Counter-Claimants,

V.

LINDA PEDRA and FRANCISCO  
PEDRAZA,

### Counter-Defendants.

On September 29, 2011, the Court issued an order granting summary judgment of liability on the counter-claims for breach of the 2003 Settlement Agreement and for express indemnity under that Agreement asserted by Counter-Defendants Alameda Unified School District and Alameda Unified School District Board of Education (together, the District). In the Order, the Court noted that the District's damages remained to be determined and that the District

1 had not moved for summary judgment on three of its counter-claims,  
2 which were still pending in the action. The Court ordered the  
3 District to file a statement proposing how to determine its  
4 damages and how it proposed to proceed on its pending counter-  
5 claims.

6 On October 4, 2011, the District filed a response indicating  
7 that its damages on the two claims on which it prevailed consisted  
8 solely of attorneys' fees and costs and suggested that it file a  
9 motion for attorneys' fees and costs. The District also indicated  
10 that it would voluntarily dismiss without prejudice its remaining  
11 pending counter-claims for enforcement of the 2007 mediated  
12 agreement, fraud and attorneys' fees.<sup>1</sup> On October 7, 2011,  
13 Plaintiff Linda Pedraza filed a response and opposition, in which  
14 she essentially requests reconsideration of the Court's summary  
15 judgment order. On October 13, 2011, Ms. Pedraza filed documents  
16 entitled, "Motion for Leave of Court to Supplement the Complaint,"  
17 and "Motion for Ex Parte Relief." Having considered all the  
18 papers submitted by the parties, the Court orders the District to  
19 file a motion for summary judgment of its attorneys' fees and  
20 costs, grants the District's request to dismiss its remaining  
21 counter-claims and declines to reconsider its summary judgment  
22 order. Ms. Pedraza's new motions to file a supplemental complaint  
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<sup>1</sup> Although the District requests attorneys' fees as damages  
27 in the claims on which it prevailed, it also requests dismissal of  
28 a separate counter-claim for attorneys' fees.

1 (docket no. 253) and for ex parte relief (docket no. 254) are  
2 denied.

3 Under Civil Local Rule 7-9, a party may ask a court to  
4 reconsider an interlocutory order if the party can show:

5 (1) That at the time of the motion for leave, a material  
6 difference in fact or law exists from that which was  
7 presented to the Court before entry of the interlocutory  
8 order for which reconsideration is sought. The party  
9 also must show that in the exercise of reasonable  
diligence the party applying for reconsideration did not  
know such fact or law at the time of the interlocutory  
order; or

10 (2) The emergence of new material facts or a change of  
law occurring after the time of such order; or

11 (3) A manifest failure by the Court to consider material  
12 facts or dispositive legal arguments which were  
13 presented to the Court before such interlocutory order.

14 Civ. L.R. 7-9

15 In her October 7 filing, Ms. Pedraza challenges the  
16 admissibility of the District's evidence on the same grounds  
17 she argued in her opposition to the District's motion for  
18 summary judgment. Because a request for reconsideration is  
19 not a forum for relitigating previous arguments, the Court  
20 declines to reconsider its summary judgment order.

21 In Ms. Pedraza's June 8, 2011 pretrial conference  
22 statement, to which she alludes in her October 7, 2011  
23 response, she indicated that discovery had not yet taken  
24 place in this case and that she planned to seek depositions,  
25 student records, and other documents such as emails, notes  
26 and Individual Education Plan recordings. If Ms. Pedraza did  
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1 not have the discovery she needed, she should have sought  
2 discovery or alerted the Court of her need for discovery in  
3 her opposition to the motion for summary judgment.

4 Furthermore, it does not appear that any further  
5 discovery would have affected the outcome of the dispositive  
6 motions. The Court's summary judgment order addressed  
7 several motions. State Defendants' motion for judgment on  
8 the pleadings was based on the allegations in Ms. Pedraza's  
9 First Amended Complaint, not on evidence outside the  
10 pleadings. Therefore, any lack of discovery did not affect  
11 the outcome of that motion. The District's motion for  
12 summary judgment on Ms. Pedraza's appeal of the Office of  
13 Administrative Hearings' (OAH) Ruling and on her claims of  
14 breach of the 2003 Settlement Agreement and violation of the  
15 IDEA for 2003-04 based upon the breach of the Settlement  
16 Agreement was based on the evidence in the administrative  
17 record. Ms. Pedraza could have cited evidence from the  
18 administrative record, if there was any, to raise a disputed  
19 issue of material fact. However, she failed to cite any  
20 evidence from the administrative record. Therefore, any lack  
21 of discovery did not affect the outcome of this motion.  
22 Likewise, the District's motion for summary judgment on its  
23 counter-claims of breach of contract and express indemnity  
24 were based on citations to evidence in the administrative  
25 record. Ms. Pedraza also could have cited to the  
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1 administrative record. She failed to do so. Further, in  
2 light of the fact that the District's claims were based on  
3 Mr. and Ms. Pedraza's failure to cooperate with service  
4 providers, they could have countered with evidence in their  
5 own possession showing that they did cooperate. They failed  
6 to do so.

7 In sum, Ms. Pedraza's ability to raise a disputed issue  
8 of material fact in all of the District's motions was not  
9 dependent upon discovery of materials in the possession of  
10 the District. The Court declines to reconsider its summary  
11 judgment order on the ground that Ms. Pedraza did not have  
12 access to discovery in the possession of the District.

13 Within four weeks from the date of this order, the  
14 District shall file a motion for summary judgment of its  
15 attorneys' fees and costs. Mr. and Ms. Pedraza shall file an  
16 opposition within three weeks thereafter and the District may  
17 file a reply one week later. The motion will be decided on  
18 the papers. If Mr. and Ms. Pedraza believe they need  
19 evidence in the possession of the District in order to oppose  
20 the attorneys' fees and costs motion, they may propound  
21 requests to the District for limited discovery solely related  
22 to the issue of the amount of the District's attorneys' fees  
23 and costs. The District's counter-claims for enforcement of  
24 the 2007 mediated settlement agreement, fraud and attorneys'  
25 fees are dismissed without prejudice. The Court denies Ms.  
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1 Pedraza's motions to supplement the complaint and for ex  
2 parte relief. (Docket Nos. 253 and 254).

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4 IT IS SO ORDERED.

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6 Dated: 10/20/2011

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CLAUDIA WILKEN  
United States District Judge